

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PATRICK LEE WILSON and CASEY
LEIGH WILSON,

Plaintiffs,

v.

FCA US, LLC; CHRYSLER DODGE
JEEP RAM; and DOES 1 through
10, inclusive

Defendants.

No. 2:20-cv-00720-JAM-EFB

**ORDER GRANTING PLAINTIFFS'
MOTION TO REMAND**

This matter is before the Court on Patrick and Casey Wilson's ("Plaintiffs") Motion to Remand. Mot. to Remand ("Mot."), ECF No. 9. FCA US, LLC and Sacramento Chrysler Dodge Jeep Ram (collectively "Defendants") filed an opposition to Plaintiffs' motion, Opp'n, ECF No. 12, to which Plaintiffs replied, Reply, ECF No. 13. After consideration of the parties' briefing on the motion and relevant legal authority, the Court GRANTS Plaintiffs' Motion to Remand.¹

I. BACKGROUND

On January 16, 2017, Plaintiffs bought a 2017 Chrysler

¹ This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for July 28, 2020.

1 Pacifica. Compl. ¶ 8, ECF No. 1-1. FCA US, LLC, a corporation
2 incorporated in Delaware with a principal place of business in
3 Michigan, manufactured and/or distributed the Chrysler Pacifica.
4 Compl. ¶ 8; Notice of Removal ¶ 28. Sacramento Chrysler, an LLC
5 organized under Delaware law, see Exs. F-G to Mayo Decl., ECF No.
6 1-1, with a principal place of business in Sacramento,
7 California, see Mot. at 15, owns, operates, and maintains
8 automobile dealerships around Sacramento County. Compl. ¶ 5.
9 Plaintiffs' newly-purchased minivan came with an express written
10 warranty. Compl. ¶ 9. During the warranty period, Plaintiffs'
11 minivan displayed several defects. Compl. ¶ 10. Defendants have
12 failed to conform the minivan to the applicable express
13 warranties, replace the minivan, or provide restitution. Compl.
14 ¶¶ 27, 34, 42, 59.

15 On March 2, 2020, Plaintiffs filed a lawsuit against
16 Defendants in Sacramento Superior Court. Plaintiffs claimed
17 Defendants committed fraud, negligently repaired their vehicle,
18 and violated several provisions of California's "Song-Beverly
19 Act," Cal. Civ. Code § 1790, et seq. See generally Compl.
20 Defendants received a copy of Plaintiffs' complaint on March 9,
21 2020 and filed a timely notice of removal on April 7, 2020. See
22 Notice of Removal, ECF No. 1. See also 28 U.S.C. § 1446(b); Fed.
23 R. Civ. Proc. 6(a). The notice invoked the Court's diversity
24 jurisdiction, arguing (1) the Court should dismiss Sacramento
25 Chrysler as fraudulently joined; and (2) the amount in
26 controversy exceeds \$ 75,000. Notice of Removal ¶¶ 11-36. In
27 response, Plaintiffs filed this motion to remand. See Mot.

28 As explained below, the Court finds that Defendants failed

1 to show Plaintiffs fraudulently joined Sacramento Chrysler. As a
2 result, Defendants' claim of diversity jurisdiction under 28
3 U.S.C. § 1332(a) fails and prevents removal under 28 U.S.C.
4 § 1441(b)(2). Because Defendants did not satisfy Section 1332's
5 diversity requirement, the Court need not address the amount-in-
6 controversy issue. Plaintiffs' motion to remand is granted.

7 II. OPINION

8 A. Timeliness

9 As an initial matter, Defendants argue Plaintiffs' motion
10 is untimely. See Opp'n at 8. The Court disagrees. A motion to
11 remand must be filed within 30 days of the notice of removal if
12 it is based on any defect other than lack of subject matter
13 jurisdiction. See 28 U.S.C. § 1447(c). Plaintiffs' motion
14 challenges the Court's subject matter jurisdiction. See Mot. at
15 3-15. Thus, the 30-day rule does not apply, and Plaintiffs'
16 motion is timely. Henderson ex rel. Henderson v. Shinseki, 562
17 U.S. 428, 434 (2011) ("Objections to subject-matter jurisdiction
18 [] may be raised at any time.").

19 B. Fraudulent Joinder

20 1. Legal Standard

21 For a defendant to remove a civil case from state court, he
22 must prove the federal court has original jurisdiction over the
23 suit. 28 U.S.C. § 1441. A federal court may exercise
24 jurisdiction over a case involving purely state law claims when
25 there is complete diversity between the parties and an amount in
26 controversy exceeding \$ 75,000. 28 U.S.C. § 1332(a). To
27 satisfy Section 1332's diversity requirement, no plaintiff may
28 be a citizen of the same state as any defendant. Id. When a

1 case is removed on the basis diversity jurisdiction, no
2 defendant may be a citizen of the state where Plaintiff brought
3 the suit. 28 U.S.C. § 1441(b)(2).

4 A court will dismiss a fraudulently-joined defendant and
5 disregard its citizenship when determining whether the parties
6 are diverse. McCabe v. General Foods Corp., 811 F.2d 1336, 1339
7 (9th Cir. 1986). A joinder is fraudulent when (1) there is
8 actual fraud in the pleading of jurisdictional facts; or (2) a
9 plaintiff cannot establish a cause of action against the non-
10 diverse party in state court. Id. Courts do not often find
11 joinder fraudulent—the burden of persuasion is high and rests
12 squarely on defendants' shoulders. Grancare, LLC v. Thrower by
13 and through Mills, 889 F.3d 543, 548 (9th Cir. 2018). A court
14 resolves "all disputed questions of fact and all ambiguities in
15 the controlling state law . . . in the plaintiff's favor."
16 Warner v. Select Portfolio Servicing, et al., 193 F. Supp. 3d
17 1132, 1135 (C.D. Cal. 2016). After which, it must "appear to
18 near certainty" that joinder was fraudulent. Diaz v. Allstate
19 Insur. Group, 185 F.R.D. 581, 586 (C.D. Cal. 1998).

20 When a defendant adopts the second approach to showing
21 fraudulent joinder, he must prove plaintiff "fail[ed] to state a
22 cause of action against a resident defendant . . . [that] is
23 obvious according to the settled rules of the state." Hunter v.
24 Philip Morris USA, 582 F.3d 1039, 1043-44 (9th Cir. 2008).
25 Courts do not take this obviousness requirement lightly. If
26 there is even a "possibility" that a state court would find that
27 the complaint states a cause of action against any of the [non-
28 diverse] defendants," a federal court "must find the defendant

properly joined and remand the case to state court.” Grancare, LLC, 889 F.3d at 549 (emphasis and modification in original). In this sense, the test for fraudulent joinder differs from the test that governs a Rule 12(b)(6) motion to dismiss. Id. The Ninth Circuit recently highlighted this difference:

If a plaintiff’s complaint can withstand a Rule 12(b)(6) motion with respect to a particular defendant, it necessarily follows that the defendant has not been fraudulently joined. But the reverse is not true. If a defendant cannot withstand a Rule 12(b)(6) motion, the fraudulent inquiry does not end there [T]he district court must consider . . . whether a deficiency in the complaint can possibly be cured by granting the plaintiff leave to amend.

Id.

2. Analysis

Plaintiffs’ only claims against Sacramento Chrysler are for breach of an implied warranty of merchantability and negligent repair. Compl. ¶¶ 45-49, 58-62. Defendants contend these claims obviously fail because: (1) the breach of implied warranty claim is non-specific and only alleges facts against FCA US; and (2) the negligent repair claim is meritless because of California’s economic loss rule. Notice of Removal ¶¶ 32-34, 38-43. However, with regard to the breach of implied warranty claim, Defendants only raise it as an issue in their notice of removal. Id. Although Plaintiffs refute this argument in their opening brief, see Mot. at 8-10, Defendants do not respond to it in their opposition brief. Therefore, Defendants have arguably conceded the issue by silence. See Ardente, Inc. v. Shanley, Case No. 07-CV-4479-MHP, 2010 WL 546485 at *6 (N.D. Cal. 2010) (“Plaintiff fails to respond to this argument and therefore concedes it through silence.”); see also E.D. Cal. L.R. 230(c).

1 Accordingly, the Court need not further address this argument.

2 Turning to Defendants' argument that Plaintiffs' negligent
3 repair claim is meritless because of California's economic loss
4 rule, the rule serves to broadly bar tort liability where only
5 economic losses are asserted. See Robinson Helicopter Co., Inc.
6 v. Dana Corp., 34 Cal.4th 979, 988 (2004). However, the rule
7 "does not necessarily bar recovery in tort for damage that a
8 defective product (e.g., a window) causes to other portions of a
9 larger product (e.g., a house) into which the former has been
10 incorporated." Jimenez v. Superior Court, 29 Cal.4th 473, 483
11 (2002) (finding the manufacturer of a defective window installed
12 in a mass-produced home may be held strictly liable in tort for
13 damage the window's defect caused to other parts of the home).

14 Plaintiffs have alleged defects to certain components of
15 the minivan. To name a few, Plaintiffs claim to have had
16 problems with the powertrain control module, the transmission
17 control module, and the steering control module. See Compl.
18 ¶¶ 10, 12-14. Plaintiffs also claim to have had problems with a
19 variety of subcomponents connected or related to the
20 transmission control module and powertrain control module. Id.
21 And Plaintiffs allege that Sacramento Chrysler failed to
22 properly store, prepare, and repair the vehicle in accordance
23 with industry standard. Compl. ¶ 61. It is not inconceivable
24 that problems with components and subcomponents of the minivan
25 may have caused damage to the minivan as a whole. Thus,
26 Defendants' argument that the economic loss rule necessarily
27 bars recovery in tort is insufficient to establish that
28 Sacramento Chrysler cannot be liable on any theory.

1 The question of whether an economic loss rule exception
2 will ultimately apply in this case is not for the Court to
3 determine at this stage; rather, the Court is to assess only
4 whether there is a possibility that a state court would find
5 that the complaint does—or an amended complaint could—state a
6 viable claim against Sacramento Chrysler. The Court finds that
7 there is such a possibility, and, therefore, cannot dismiss this
8 defendant as fraudulently joined.

9 C. Rule 21

10 Federal Rule of Civil Procedure 21 allows the Court to “at
11 any time, on just terms, add or drop a party.” A Court may use
12 Rule 21 to perfect its diversity jurisdiction by dismissing a
13 non-diverse party, but only if the nondiverse party is
14 “dispensable” under Rule 19. Sams v. Beech Aircraft Corp., 625
15 F.2d 272, 277 (9th Cir. 1980).

16 Setting aside the question of whether Sacramento Chrysler
17 is a dispensable party, the Court finds it inappropriate here to
18 dismiss this party for the sole purpose of granting itself
19 jurisdiction. Judges in the Eastern District of California
20 carry among the heaviest caseloads in the nation. Defendants
21 have not presented any compelling reasons why the Court should
22 disrupt Plaintiffs’ choice of forum and further burden its
23 federal docket when not required to do so by law. See Opp’n at
24 20-21. Defendants request is denied.

25 D. Sanctions

26 Plaintiffs exceeded the Court’s 5-page limit on reply
27 memoranda. See Reply; see also Order re Filing Requirements
28 (Order), ECF No. 2-2. Violations of the Court’s standing order

1 require the offending counsel (not the client) to pay \$50.00 per
2 page over the page limit to the Clerk of the Court. Order at 1.
3 Moreover, the Court will not consider arguments made past the
4 page limit. Id. In total, Plaintiffs' reply memorandum exceeded
5 the Court's page limit by 5 pages. Plaintiffs' counsel must
6 therefore send a check payable to the Clerk for the Eastern
7 District of California for \$250.00 no later than seven days from
8 the date of this order.

9 III. ORDER

10 The Court declines to dismiss Sacramento Chrysler as
11 fraudulently joined or under Rule 21. As a result, the Court
12 lacks subject-matter jurisdiction over this case. Plaintiffs'
13 motion to remand this action to the Sacramento County Superior
14 Court is GRANTED.

15 IT IS SO ORDERED.

16 Dated: August 25, 2020

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18 JOHN A. MENDEZ,
19 UNITED STATES DISTRICT JUDGE
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